

THE  
MADANA PARIJATA

ON  
INHERITANCE.

TRANSLATED INTO ENGLISH

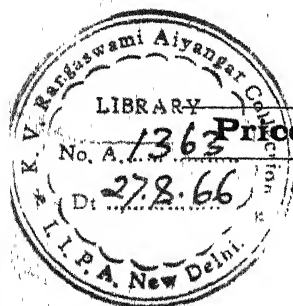
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on some of the Upanishads, etc.*

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## PREFACE.

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THE Madana Parijata is an ancient Hindu Law treatise written by Visvesvara Bhatta, the great commentator of the Mitakshara. This work was composed by the author at the command of King Madana Pala, after whom it is named. It was written about the time of Madana Vinoda, a work ascribed to King Madana Pala and written in Samvat 1231 or 1175 A. D. The Madana Parijata closely follows the Mitakshara, elucidating in many points what is abstruse in the latter. Rajkumar Sarvadhikari in his 'Principles of the Hindu Law of Inheritance' refers to this work as one of the two greatest authorities in the Benares School of Hindu Law. This work, though referred to by several text-writers on Hindu Law has not yet been translated into English for the benefit of those interested in the study of Hindu Law, and I hope an accurate translation of the chapter on Inheritance, contained in the work, will be found useful alike to the Bench and the Bar.

THE TRANSLATOR.

# MADANA PĀRIJĀTA.

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## *Partition of heritage.*

As divided coparceners only are entitled to perform *sraddha* separately, partition of heritage is described after the chapter on *raddha*.

Here Nārada says :—"That department of law which treats of the division of the paternal wealth by the sons is called by the wise *Dāyabhāga* or partition of heritage."<sup>1</sup> *Commentary* :—The word *paternal* is illustratively used of the grandfather, etc. The word *tat* is an adjective qualifying the noun through the verb.

There are four periods for partition. "One is when even though the father be alive he desires partition. Another period is when the sons desire it though the father be unwilling, provided the mother is past menstruation and the father does not like the face of women and is not desirous of wealth. Another is when the sons desire it and the father is old, addicted to vice and afflicted with incurable diseases, though the mother is not past menstruation and the father is unwilling. The other is when the father is dead. Of these Yājñavalkya states the first case thus : "If the father makes a partition, he may divide his sons according to his pleasure. He may give the eldest the best share or make all equal sharers."<sup>2</sup>

And the allotment of shares to the eldest, &c., is thus shewn by Manu :—"The deduction in favor of the eldest is a twentieth part and

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(1) Nārada, XIII, 1.

(2) Yājñavalkya II, 114.

the most excellent chattel of all ; a half of that to the middlemost and a fourth of that to the youngest.”<sup>1</sup> *Commentary*. The meaning of this text is:—A twentieth part of the partible wealth and what is most excellent of all the partible chattels should be given to the eldest. A fortieth part and one middling chattel to the middlemost and an eightieth part and the worst of all the chattels to the youngest. They should equally divide and take the wealth that is left after these deductions are made. There are many other similar texts of Gautama and others laying down an unequal division. They are not quoted here for fear of swelling the book. Though unequal division is thus established by the Sastras, still as it is abhorred by the world, this mode of division is not enjoined to be practised on account of the text which says: “That which does not lead to heaven and is abhorred by the world, one should not practise though it is a virtue.”<sup>2</sup> The Smṛiti says:—“Just as the practice of Niyoga and the slaying of a barren cow are not now allowed, so partition with deductions is not now found.”<sup>3</sup>

If, however, the father by chance makes an unequal partition it does not become void ; so says Yājñavalkya:—“A legal distribution made by the father among sons separated with greater or less shares is pronounced valid.”<sup>4</sup> *Commentary*:—If legal, i.e., not divorced from law, then it cannot be annulled. This is the meaning. It is in effect said that if it is illegal, it becomes void.

Accordingly Nārada also says:—“A father who acts contrary to law has no power in the distribution of wealth.”<sup>5</sup>

But where there is no abhorrence of the world to an unequal division, there unequal division certainly takes place as Nārada says: “A father making a partition may take two shares for himself.”<sup>6</sup> *Commentary*:—This also applies to the person making a self-acquisition.

So Vasishtha says:—“But he among them who acquires wealth himself shall take only two shares.”<sup>7</sup> Among them, i.e., among those entitled to share, the paternal uncles, &c.

(1) Manu, IX. III.

(2) Anonymous.

(3) Anonymous.

(4) Yājñavalkya II, 116.

(5) Nārada XIII. 16.

(6) Nārada XIII. 12.

(7) Vasishtha XVII. 51.

Nārada after saying "They shall divide the wealth equally," states the second case thus: "When the mother's menstruation has ceased and the sisters have been married and when the father has turned away from sexual enjoyment and his desires have ceased".<sup>1</sup> *Commentary*:—*Prattāsu*] married. *Ramanam*] sexual enjoyment. The meaning is "when his desire for sexual enjoyment has ceased"; desires] regarding wealth. Sankha states the third case thus:—"When the father is unwilling, partition may take place if he be old, perverse in mind and afflicted with disease."<sup>2</sup> *Commentary*:—Perverse in mind] addicted to vice. Yājñavalkya states the fourth case thus:—"After the parents let the sons divide the wealth and the debts equally."<sup>3</sup> *Commentary*:—After parents] after (the death of) the father and mother. The wealth, &c.,] The meaning is that they shall divide the paternal wealth and debts equally.

The same author states a distinction when the sons themselves make a partition after the father's death or during his life when he is subject to the taint of degradation, &c. "The uninitiated must be initiated by those already initiated, as also the sisters by giving them a fourth part of their own shares."<sup>4</sup> The meaning is that partition should be made after initiating uninitiated brothers and sisters, i.e., performing their sacraments up to marriage inclusive. The meaning of "as also, &c.," is that the unmarried sisters should be married and should be given a fourth share of their own respective shares. By "their shares" is meant "the shares which the sons of the various castes would be entitled to, under the subsequent text 'they shall have three, two and one shares, etc'." The following is the mode of division:—A Brahmin has one wife, a son and a daughter by her. Here the father's wealth should be divided into two shares, and one of these shares should be divided into four parts. After giving the daughter a fourth part, the son shall take the rest. When there are two sons and one daughter, then, the father's wealth should be divided into three shares, and one of these shares should be divided into four shares. Having given a fourth share to the daughter, the sons shall equally divide and take the rest. The same should be inferred when there are more than two sons and two daughters. If there be one son and two daughters, then the father's wealth should be divided into three

(1) Nārada XIII, 3.

(2) Not found.

(3) Yājñavalkya II. 117.

(4) *Ibid*, II. 124.

shares. One of these shares should be divided into four parts. Having given each of the daughters a fourth part, the son shall take all the rest. This should be the rule of division adopted where there are sisters and brothers of the same caste unequal in number. The following rule should be applied where there are brothers and sisters of different castes equal or unequal in number. Thus when a Brahmin has wives of all the castes, Brahmin, &c, and his Brahmini, Kshatriya, Vaisya and Sudra wives have each a son and daughter and where the Brahmin has thus eight children, four male and four female, then the issue of the Brahmini wife take eight shares, the issue of the Kshatriya wife six shares, the issue of the Vaisya wife four shares and the issue of the Sudra two shares. Thus having divided the whole wealth into twenty shares the daughter of the Brahmini should be given a fourth part of the four shares which represent the share of a son of her caste. To the daughter of the Kshatriya should be given a fourth part of the three shares which represent the share of a son of her caste. To the daughter of the Vaisya should be given a fourth part of the two shares which represent the share of a son of her caste. To the daughter of the Sudra wife should be given a fourth part of the one share which represents the share of a son of her caste. Having thus given, the sons of the Brahmini, the Kshatriya, the Vaisya and the Sudra wives should put together the rest of the wealth and divide and take it in four, three, two and one shares respectively. Where the brothers and sisters are unequal in number, then having divided the whole wealth into as many shares as there are brothers and sisters according to the rule "they shall take four, three, two and one shares respectively," the sisters should be given a fourth part of the share due to a son of their caste. Having so given, the remaining shares should be put together and should be divided among the sons in four, three, two and one shares respectively. The rule should thus be understood. Some, however, think thus: Having given the maiden daughters a fourth share according to the rule above laid down, their marriage must be performed with such wealth alone. It is not that they should be married out of the common wealth and that they should be subsequently given a fourth share. This opinion should be rejected as Medhatithi, the author of the Mitakshara, and others do not incline to that view. Or the question may be determined with reference to the practice

in different countries. The periods of partition and what arise in that connexion, these both have been described. Now primary and secondary sons are described in order to show the rule of succession to the heritage.

On this point Yájñavalkya says:—"The legitimate son (*aurasa*) is one procreated on the lawful wedded wife. Equal to him is the son of an appointed daughter; the son of the wife is one begotten on the wife by a kinsman of her husband or by some other. One secretly produced in the house is the son of hidden origin. A damsel's child is one born of an unmarried woman. He is considered as son of his maternal grandsire. A child begotten on a woman whose first marriage has not been consummated or on one who had been deflowered before marriage is called the son of a twice-married woman. He whom his father or his mother gives for adoption shall be considered as the son given. The son bought is one who was sold by his father and mother. The son made is one adopted by the man himself. One who gives himself is self-given. The child accepted while yet in the womb is one secured with a bride. He who is taken for adoption having been forsaken by his parents is a deserted son. Of these the next in order in the absence of all the preceding is heir and giver of the *pinda*. This rule is stated in respect of sons equal in caste."<sup>1</sup>

*Commentary*:—The virtuous wife is one belonging to the same caste and married in legal form. The son born of her is the *aurasa*. He is primary. So also the son begotten on a wife of the same caste married in the *Āsura* and the succeeding forms, so the *Múrdhāvasikta*, *Ambasbtha*, and the *Párasava* the same as *Nisháda*, sons begotten by a Brahmin on his wives in the order of castes, such as the *Kshatriya*, &c, the *Māhishya* and *Ugra*, sons begotten by a *Kshatriya* on wives of the *Vaisya* and *Sudra* castes, the *Karana* son begotten by a *Vaisya* on a *Sudra* wife, all these are certainly *aurasas*. *Putrikásutah*] either the appointed daughter herself regarded as a son or the son of the appointed daughter. Either way the *Putrikásuta* is equal to him i.e., the *aurasa*. So the *Dvyámushyáyana* (the son of two fathers) is the *aurasa* son of his procreator. The *Kshetraja* (son of the wife) is one begotten on the wife under the *Niyoga* rules by one of the same caste or *gotra*,

a *sapinda* or her husband's younger brother. The *Gūdhaja* or son of hidden origin is one begotten in secret on a woman by some unascertained person of the same caste in her husband's house. By some unascertained person]; this is from the standpoint of the husband, not of the wife. The knowledge of the person belonging to the same caste is possible because the fact of it is known through the wife. Where owing to sexual intercourse with a man under compulsion or in secret even she does not know his caste, the son born of it bears only the name of *Gudhaja* but does not attain the status of the *Gudhaja* previously described. The son begotten on a maiden by a man of the same caste is called the damsel's son. He is the son of his maternal grandsire if she is unmarried and stays under her father's roof. If she has been married, the son then belongs to her husband.

Accordingly, Manu says:—"That son whom a maiden in her father's home begets in secret, let one call him the damsel's son by name, belonging to the damsel's husband."<sup>1</sup> *Commentary*:—Because the word *husband* is used, it should be understood that the son belongs to the husband if she has been married and to the maternal grandsire if otherwise. The twice-married woman is of two sorts—the virgin and the deflowered. One begotten on her by a man of the same caste is called *Pannarbhava*. The *Dattaka* is also of the same caste; for Manu says: "He whom his father or mother gives during distress and with water, being of the same caste and affectionately disposed should be known as the son given."<sup>2</sup> *Sadrisam*] of the same caste. The mother has power to give only in distress when the husband is dead or is absent. Similarly, the father has power only in distress when the mother is dead or is subject to lunacy, &c. Or, both have power only when acting together. As the expression "in distress" is used, it is inferred that in the absence of distress, the son should not be given. If given in the absence of distress, sin attaches to the giver and not to the receiver.

An only son should not be given or taken. So Vasishtha says:—"But let not one give or take an only son."<sup>3</sup>

Similarly, the eldest son also should not be given.

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(1) Manu, IX, 170.

(2) *Ibid.*, IX, 168.

(3) Vasishtha, XV, 3.



Vasishtha thus lays down the manner of taking a son: "One desirous to adopt a son, should convene his kindred, inform the king, perform the *homa* with *vyáhrítis*, in the middle of his dwelling, and shall only take one whose relatives are not far off and who is nearest among his relatives."<sup>1</sup> *Nivésanasya*] of his dwelling. The expression "whose relatives are not far off" is used for the purpose of prohibiting the taking of one who is very much removed by country and language. This rule should be applied *mutatis mutandis* to the son bought, to the son self-given and to the son-made. The son bought is one of the same caste not being an only or the eldest son sold in distress by his father and mother together as previously laid down or by either of them. As for what has been stated by Manu: "He is the son bought whether equal or unequal to him,"<sup>2</sup> that is intended to mean equal or unequal by good qualities and not by caste, such as Brahmin, &c. The son made is one who is taken for a son by one anxious to have a son, he being devoid of parents and induced to become his son by show of wealth, &c. The son self-given is one who being either devoid of parents or forsaken by them seeks one and exclaims: "I shall become thy son." Here also he must be of the same caste. The son received with a pregnant bride is one born of the pregnancy of a woman married while pregnant, if the pregnancy was due to a male of the same caste. One who being forsaken by his father and mother is taken for a son by a person of the same caste is called a deserted son. Here the author shows the order of succession by the following portion of the text: "He is the giver of the *pinda* and taker of the wealth, &c." The author next says that this applies to sons of the same caste (with the father) by the following portion of the text: "This rule has been stated by me in respect of sons of equal caste." Though the sons of the wife, &c., may have been begotten by males of a superior caste, still they retain their appropriate name; but do not attain to the rank of sons begotten by males of the same caste, because the clause: "This has been stated in respect of sons of equal caste" has a restrictive force. If begotten by men of inferior caste it should be distinctly understood that they are contemptible, being born in the inverse order (*Pratilomaja*). The damsel's son, the son of concealed birth, the son received with the pregnant bride, and the son of the twice-married woman are said to be of the same caste

through their procreator's and not by their own nature ; for, they being sons of an unchaste wife and a widow are themselves excluded from the pale of caste.

If after the making of an appointed daughter an *aurasa* son is born, then Manu states a distinction :—"If subsequent to the making of an appointed daughter a son is born, division in that case shall be equal ; for women have no right of primogeniture."<sup>1</sup>

Kútyáyana says : "If an *aurasa* is born the other sons take a fourth share if of the same caste ; but if of different caste they get only food and raiment."<sup>2</sup> Of equal caste] the son of the wife, the adopted son, the son bought, the son made, the son self-given, and the deserted son. Of different caste] the damsel's son, the son of concealed birth, the son received with the pregnant bride and the son of the twice-married woman.

As for the text of Vishnu: "But the damsel's son, the son of concealed birth, the son received with the pregnant bride, the son of the twice-married woman, all these are contemptible and do never obtain a share of the father's wealth,"<sup>3</sup> that is intended to prohibit the taking of a fourth share by these where there is an *aurasa* son. In default of the *aurasa* son, &c., even the damsel's son, &c., certainly take the whole of the father's wealth according to the text :—"The next in order in default of the preceding." This is Vijñánésvara's view. This order of succession laid down by us here is also laid down in the Dáyabhága chapter of the Subodhini, a commentary on Vijñánésvara's work.

Regarding one who being entitled to a share does not wish to take it either from lack of avarice, &c., or from ability to earn for himself, Yájñavalkya says : "One who is able (to earn) and not desirous (for partition) should be separated by giving him some trifle."<sup>4</sup> Something, however valueless, should be given and partition should be made ; and this is enjoined in order that his sons, &c., may not subsequently claim a partition.

In respect of the *Dvyámushyáyana* (the son of two fathers) the author lays down a special rule :—"The son begotten under the Niyoga rules by a sonless man on the wife of another is legally

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(1) Manu, IX, 134.

(2) II, Cole. Dig. 348 COXVIII.

(3) Not found.

(4) Yajnavalkya II, 116.

the taker of the wealth of both and the giver of the *pinda*.”<sup>1</sup> When the owner of the seed being himself sonless enters at the time of supplying the seed into the special contract ‘the son born hereof shall belong to us both,’—it is only then that the son takes the wealth of the owners of both the seed and the soil. In the absence of a special contract, he takes the wealth only of the owner of the soil.

Regarding the son born subsequently to partition, Manu says :—  
 “But the son born after partition takes only the paternal wealth.”<sup>2</sup>  
 The word *pitriyam* here is an *ekasesha* compound and hence means ‘belonging to the father and the mother.’ Accordingly, it is also said :—“What is acquired by the father himself after division with his sons, all that belongs to the son born after partition and the sons born before it are declared powerless over such wealth.”<sup>3</sup> It is also said : “Or let him divide equally with those who may have been re-united with him (father).”<sup>4</sup> The meaning is, that the son born subsequent to partition shall share equally with others who after partition were reunited with the father.

On the question how share should be allotted by the other brothers to the son born subsequent to partition of the mother or the brother’s widow whose pregnancy was not manifest at the time of the partition, Yājñavalkya says : “His share should be allotted out of the visible wealth corrected for income and expenditure.”<sup>5</sup> [*Tadvibhāga*] his share. Here ‘his’ refers to the son born after partition in the manner previously stated. ‘*Drisyādva*’; the particle ‘*vá*’ here is used for the purpose of emphasis and means, ‘*certainly*.’ Of what visible wealth? Of the visible wealth corrected for income and expenditure. Income is gain derived from agriculture, &c., in respect of their shares obtained at the partition. Expenditure is what is incurred of necessity to discharge the father’s debts, to maintain the family, &c. Having added the share and income and subtracting from it the expenditure incurred, the brothers should each give out of his own wealth, portions in fair proportion, to the son born after partition so as to make his share equal to their own. This is the meaning. If the pregnancy of the mother or the brother’s widow be manifest, partition should

(1) Yajnavalkya, II, 127.

(3) Brihaspati. XXV, 19.

(2) Manu, IX, 216.

(4) Manu, IX, 13.

(5) Yajnavalkya, II, 122.

be made after their confinement. For Vasishtha says :—"Now partition among brothers to await till childless women beget sons."<sup>1</sup> The meaning is, that partition should be made after confinement of childless women whose pregnancy is manifest.

When ornaments, &c., are given by the father or the mother after partition to the divided son, the son born after partition should not prohibit it. Accordingly, the holy sage says: "Whatever is given to any of the sons by the parents becomes his exclusive wealth."<sup>2</sup> Whatever is given by the parents to any of the sons before partition also becomes his exclusive wealth by parity of reasoning. Hence, when anything is given to one, none other should prohibit it.

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*Next, partition among sons unequal in caste.*

Here Yājñavalkya says :—"The sons of a Brahmin in the order of castes shall take four, three, two and one shares; the sons of a Kshatriya, three, two, and one shares; the sons of a Vaisya two and one shares."<sup>3</sup> In the order of castes the sons of a Brahmin begotten on wives of Brahmin, Kshatriya, Vaisya and Sudra castes, respectively, shall take four, three, two and one shares. The son of the Brahmini wife takes four times the share of a Sudra; the son of the Kshatriya wife takes three shares because he is inferior to the Brahmini's son by a fourth; the son of a Vaisya wife takes two shares as he is inferior to a Brahmini's son by a half; the son of a Sudra wife takes a share. The sons of a Kshatriya begotten on wives of the Kshatriya, Vaisya and Sudra castes, respectively, take three, two and one shares. The son of a Kshatriya begotten on a Kshatriya wife takes three shares because he is a degree inferior to the son begotten by a Brahmin on a Brahmini wife; the son of a Kshatriya begotten on a Vaisya wife, two; and the son begotten on a Sudra wife takes one. *Vidjah*] sons begotten by a Vaisya on his wives of the Vaisya and Sudra caste. The plural number in *Vidjah* has reference to the possible plurality of the sons and not to the plurality of the husbands of the wife. The son of a Vaisya begotten on a Vaisya wife takes two shares, because he is inferior to the son of a Brahmin

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(1) Vasishtha, XVII, 41.

(2) Not found.

(3) Yajñavalkya, II, 125.

begotten on a Brahmini wife by a half, and the son begotten by a Vaisya on a Sudra wife takes one share. In this manner, the rule should be applied whether the sons be equal or unequal in number.

The sons of a Brahmin begotten on his wives of the Kshatriya and other castes shall not take land acquired by acceptance of gift. So the Sastra says :—"Land acquired by acceptance of gift shall not be given to the sons of the wife of Kshatriya and other castes. Even if the father give it to them, the son of the Brahmini may resume it when he is dead."<sup>1</sup> As the term "acceptance of gift" (Pratigraha) is used, they take land acquired by purchase, &c. So "the son begotten by a twice-born on a Sudra wife does not take a share in land." The meaning is, that the son of a Sudra wife begotten by any of the twice-born does not take shares in land acquired by acceptance of gift, purchase, &c. As for this other text which prohibits the giving of any share to the son by a Sudra wife, viz. : "The son by a Sudra wife does not share in the wealth of the Brahmin, Kshatriya and Vaisya. Whatever his father may give him, that alone shall be his wealth,"<sup>2</sup> this is intended to lay down that no share shall be allotted at a partition to the son by a Sudra wife where his father, during his lifetime, had given him something. But where nothing had been given by the father, his right to share certainly subsists.

Yājñavalkya lays down a special rule in the case of the son begotten by a Sudra on a female slave :—"Even the son begotten by a Sudra on a female slave shall obtain a share at the father's choice. But when the father is dead let his brothers make him the partaker of half a share. If brotherless he takes the whole in default of the daughter's son."<sup>3</sup> *Kūmatah*] at the father's choice, he may take a share. That is, he has a share if the father give him one. The drift is, that the sons by married wives shall give him a half of their share. If brotherless, *i.e.*, having no brother born of a married wife, he shall take the whole paternal wealth if there are no daughters of married wives or their sons. If there be, the son of the female slave gets only half a share. Since the Sudra is specially named, the conclusion is that sons begotten by the twice-born on a female slave do not in any manner obtain shares but are entitled only to food and raiment.

(1) Brihaspati, XXV, 30.

(3) Yājñavalkya, II, 133 and 134.

(2) Manu IX. 155.

*The share of the grandson in the grandfather's property.*

On this subject, Yājñavalkya says: "The allotment of shares among sons of different fathers is according to the fathers."<sup>1</sup> Sons of different fathers], the meaning is sons begotten by several brothers on their several wives. Among these, the allotment of shares in the property of the grandfather is according to their respective fathers. The purport is this: if there are three brothers, and one of them has one son, another two, and the third three, then these six (grandsons) do not divide their grandfather's property into six shares and take each a share; but the grandfather's property should be divided (first) into three shares among the three brothers, and the only son of one brother shall (then) take the one share of his father, the two sons of another brother the share of their father; and similarly in the other case also. If after the begetting of sons, some of the brothers die and some others are alive, then the division between the brothers and brothers' sons shall be on the lines laid down already, i.e., the brothers shall take their own shares and the brothers' sons shall take their fathers' shares.

The same author states a distinction in the case of a partition taking place with the father of the grandfather's property: "In land acquired by the grandfather, in corrody or in chattels, the ownership of both father and son is equal."<sup>2</sup> Land] rice-field, etc. *Nibandah*] an assignment or corrody; so many leaves receivable from a plantation of betel-pepper, or so many nuts from an orchard of nuts; this is called corrody, because it is by this computation that quantities of leaves, etc., are assigned by those conversant with that trade. Chattels] gold, silver, etc., obtained by acceptance of gift, conquest, trade, agriculture, etc. In the property of the grandfather consisting of all these, the ownership of both father and son is equal. Therefore, the meaning is that the restrictions such as 'while the father is alive partition should take place only with his consent,' 'the father shall take two shares' and 'the allotment of shares shall be according to the fathers', etc., do not apply. The ownership of the grandson begotten by a Sudra upon a female slave is the same; but there is a distinction with regard to his share. The special mode of division in his case is the same as that laid down for the partition of a subsequently born son.

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(1) Yajnavalkya, II, 120.

(2) *Ibid*, II, 121.

Nor could it be objected that there is an inconsistency, as the text 'among sons of different fathers', etc., lays down the right of the grandson in the grandfather's wealth to be through the father and not by himself and as the text 'in land acquired by the paternal grandfather, etc.', lays down the equal right of the father and the son in the grandfather's wealth. The text 'among sons of different fathers, etc.', applies to the partition of the grandfather's wealth among grandsons whose fathers are dead. This is indicated by the expression 'the allotment of shares is according to the fathers'; it is understood that the grandsons have a claim to the grandfather's property only through their fathers. This, however, does not hold good where the father is alive, as he has ownership in the grandfather's property by his mere birth; but if the father is dead, the grandsons have a right to the property, as the father's right to it has ceased by his death; thus the mode of division of the grandfather's property is restricted by the text: "the allotment of shares among sons of different fathers is according to their fathers." "Land acquired by the grandfather"; this applies in respect of the grandson's right to the grandfather's property when both the father and the son are alive; and this is indicated by the portion of the text 'of the father and the son in that property shall be equal'; for as the deceased could have no ownership, the portion of the text, 'the right of the father and the son in that property shall be equal' would have no application where either of them is dead. Where there are three brothers, and one of them has one son, another two and the third three, and where all the fathers and sons are alive, the allotment shall be made as formerly laid down. But if, however, among the issue of one brother both sons and grandsons exist, among the issue of another only sons are alive and among the issue of the third only grandsons, then the sons whose father is alive take the grandfather's property as laid down by the rule 'land acquired by the grandfather.' Where the sons have predeceased and the grandsons alone are alive, then the grandsons only shall not take their shares. This is according to the principle of the text, 'among sons of different fathers, etc.,' and not of the text 'in land acquired by the grandfather', for their fathers are dead; this rule of division applies only where the grandfather is dead. Where the grandfather is alive, partition takes place at the will of the grand-

father or his son but not at the will of the grandson ; because when speaking of the time of partition it has already been said that partition takes place at the will of the father sometimes and at other times at the will of the son.

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*The determination of the share of the mother.*

On this subject, Yājñavalkya says: "If he make the shares equal, then his wives should be made equal sharers, if no *stridhana* had been given them by the husband or the father-in-law."<sup>1</sup> The word '*sama*' (equal) denotes that these should be neither less nor greater ; or the word 'equal' may refer to the allotment of shares as pointed out in the text 'they take four, three, two and one shares respectively' ; it is said to be equal, being legal, i.e., in conformity with the codes of law. Such being the case, if the father makes of his own free will his sons equal sharers, then his wives also should be made equal sharers. If the sons begotten on Brahmini and other wives be equal sharers, then their respective mothers also shall get equal shares ; if, however, the *mūrdhīrasikta* and other sons get three, two and one shares respectively, then their mothers also shall take equal shares with their sons.

To whom no *stridhana* had been given] ornaments, etc. If *stridhana* had been given, then the mode of allotment should be understood to be that laid down in the chapter on *Ādhivedhanika* (property given at the time of supersession). The manner laid down there is this, viz., if it had been given, a half is ordained. The word 'half' (in 'half is ordained') means 'a portion' not an exact moiety.

By how much money the *stridhana* falls short of the son's share, so much money should be given and the wife's share made equal to the son's. But if it be objected that on this view *stridhana* will become partible, only the mode being different, and that this would conflict with the text laying down the impartibility of *stridhana*, it is unsound. Where there is a special rule, the general rule of impartibility of *stridhana* yields, but where there is none, it stands good. Here the texts 'to whom no *stridhana* has been given',



and 'if it has been given, a half should be given' must necessarily be read together and are exceptions to the general rule. But when the father makes an unequal distribution according to the text 'he may give the eldest the best share', then the wives do not get the best shares, etc.; but only take equal shares in the common property left after the allotment of the best shares, etc. They also get the deductions allowed for them.

Likewise, Āpastamba: "*Paribhānda* and the household ornaments belong to the wife, as also household utensils."<sup>1</sup> *Paribhānda*] millstone, mortar, pestle, winnowing basket, etc.

Even at the partition instituted by the sons after the death of the father, the mother gets an equal share. So Yogisvara: "Of sons dividing after their father, the mother also takes an equal share."<sup>2</sup> After the father] after the father's death. Here also the two texts: 'to whom no *stridhana* had been given by the husband or the father-in-law' and 'if given, a half is ordained', should be applied, because of parity of reasoning and of want of anything to the contrary; this is the view of Vijñānesvara, Dhāresvara and others. Otherwise, the word 'half' in 'if given, a half is ordained' will denote an equal partition; therefore, it is implied that in case there is *stridhana*, a half of the share of a son should be given, *i.e.*, if the son has ten *nishkas*, then the mother should be given an allotment of five *nishkas*. The ornaments of the wives of brothers are certainly indivisible; likewise even where the females themselves are parties to the partition, the ornaments previously given severally to each of them are also indivisible; and this will become clear in the chapter on 'impartible wealth'. When, however, the father and the son divide and take the wealth acquired by the grandfather, then the wife of the grandfather gets an equal share with her son, in the manner already laid down, in the text: "The mother too gets an equal share," and because it is the property of the grandfather. If the wives of the paternal grandfather are issueless, then they receive their ornaments given out of affection and no share. Thus at a partition of the effects of the grandfather, the mother does not receive a share, but only her ornaments, etc.

"If he makes the shares equal, his wives shall be made equal sharers," likewise "let them divide after the death of the father ;

and the mother also shall take an equal share;" for these texts apply to the case in which the father has predominant interest; that wealth which the father obtained at a partition or acquired by acceptance of gift is wealth in which the father had a predominant interest. It has been already said that the father's wealth goes to the son.

On the question who is entitled to the mother's wealth, Yājñavalkya says: "The wealth of the mother remaining after discharging her debts, the daughters shall take; in their default, their issue."<sup>1</sup> The daughters shall divide and take the mother's effects remaining after discharging the debts contracted by her. The distinction in this case is this: Where there are both married and unmarried daughters, the unmarried daughters alone shall take. In the absence of the unmarried daughters, the poor among the married daughters shall take.

Likewise Gautama: "The *strīdhana* belongs to the daughters unmarried and unendowed."<sup>2</sup> *Apratta*] unmarried. Unendowed] poor. In default of daughters, as in the absence of sons, the issue of the daughters (succeed). The meaning of this, *viz.*, that the daughter takes the property first and then her issue, is stated in the latter portion.

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*Next, persons competent to take the Strīdhana of a woman dying without issue.*

On this point, Yājñavalkya: "If a woman dies leaving no issue, her relations shall take that; the *strīdhana* of a woman married in the four forms of marriage, Brāhma, etc., goes to her husband; if in the other forms of marriage, it goes to her parents. But if she has issue, it goes to her daughters."<sup>3</sup> The *strīdhana* of a woman dying without any issue, *i.e.*, having no daughter, daughter's son, son or son's son, etc., her relatives as husband, etc., take. If the woman is married in (any of) the Brāhma, Daiva, Ārsha or Prājāpatya forms dies, her husband gets her wealth; in default of him, those persons who are nearest related in the husband's family take. The inference is that in their absence, those who are nearest in the father's line take. The wealth of a woman married in (any

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(1) Yajnavalkya, II, 117.

(2) Gautama, XXVIII, 24.

(3) Yajnavalkya, I, 145.

of) the remaining Ásura, Gándharva, Rákshasa and Paisacha forms, the parents take; first, the mother; and in her absence the father; in default of him, the nearest relations in the family of the father; in default of them, the nearest relations in the family of the husband. If she has issue, her wealth goes to her daughters and daughters' sons, etc., in whatever form of marriage she might have been married. If the term 'daughter' here were taken to denote the daughter of the mother whose wealth is divided, it would simply be repeating what has been already laid down in the text, "the daughters shall take the wealth of the mother remaining after discharging her debts." Even among granddaughters, if there exist both married and unmarried, the unmarried alone take; if there are both endowed and unendowed, the unendowed alone; if there exist granddaughters unequal in number born of different mothers, the allotment of shares is by the mothers. That is stated by Gautama: "There is a special mode of division in the case of the lines of the father, mother and sister."<sup>1</sup>

If there exist both daughters and granddaughters, something but not a share should be given to the granddaughters out of affection. So Manu: "To the daughters even of these (daughters), something according to merit should be given out of the grandmother's property, as a token of affection."<sup>2</sup> Daughters of these] daughters' daughters. In the absence of granddaughters, daughters' sons shall take, as is laid down by Nárada: "The daughters shall take the wealth of the mother; in the absence of daughters, their issue."<sup>3</sup> The meaning is that the daughters take the wealth of the mother; in the absence of these daughters, their progeny, *i.e.*, daughters' sons take. Another reading is 'the issue' (nominative singular).

So the daughter's sons alone take; not the issue (daughter) of the daughter's daughter, as she is more remote than the daughter's son. In default of these daughters' sons also, the sons, and grandsons, denoted by the word 'issue' in "the daughters take what remains of the wealth of the mother after discharging her debts, and in their default their issue," take the wealth in their order. With this same idea, Manu says: "After the death of the mother, the uterine

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1. Not found.

2. Manu, IX. 193.

3. Nárada, XIII. 2.

brothers shall divide her wealth equally, as also unmarried uterine sisters.”<sup>1</sup> The purport of this text is: “those sisters who are born of the same mother take; in their absence, their descendants up to daughter’s son take; in their absence, the (uterine) brothers. The sons of the deceased woman and not the sons of her co-wives take; in their default, the grandsons.” The use of the word ‘uterine’ in ‘the uterine brothers shall divide equally’ is to exclude the sons of co-wives. In the absence of her own sons, the sons of co-wives succeed; if, however, the daughter of one co-wife belongs to a higher caste, than the son of another co-wife, then the daughter of higher caste alone takes; in her default, the daughters’ sons of the same description alone.

So also Manu: “The wealth of a woman given her by her father, the Brahmini daughter takes; or else it goes to her issue.”<sup>2</sup> It is said that the maiden takes the wealth of the woman; the word ‘woman’ is used absolutely, and so also the word ‘maiden.’ As these two words ‘woman’ and ‘maiden’ are not correlatively used, these may be understood to refer to the stepmother and the stepdaughter also. The word ‘Brahmini’ is used illustratively of a maiden of higher caste. Thus the stridhana of a Sudra woman, the Brahmini, or Kshatriya or Vaisya daughter takes; so the Brahmini or the Kshatriya daughter takes the stridhana of a Vaisya woman; and likewise the Brahmini daughter takes the wealth of the Kshatriya woman. Here as it is stated that a daughter of a co-wife of higher caste takes the property of a woman of a lower caste, it is understood that the daughter of a co-wife of a lower caste has no right to the wealth if there exist sons of a co-wife of a higher caste.

In default of sons and grandsons, the brother takes; in his default, his sons; thus in this order the brothers, etc., are heirs. The stridhana, excepting sulka alone, should be divided; for the brothers alone take the sulka. So Gautama: “The sister’s sulka belongs to the uterine brothers, and after them to the mother.”<sup>3</sup> The meaning is that even if the heirs from daughters to son’s sons are alive, the uterine brothers shall alone take the sister’s sulka. Something about a betrothed damsel is stated in the connection of stridhana.

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1. Manu, IX. 492.

2. Manu, IX. 198.

3. Gautama, XXVIII. 25.

Yājñavalkya: "He who having betrothed a damsel (to a certain person) afterwards keeps her from him, should be punished, and made to pay the expenses with interest; if she dies, let him pay what was given (by the bridegroom for the damsel) after calculating the expenditure of both parties."<sup>1</sup> A father who having promised his daughter (to a person) takes her back from him, even though he is free from defect, should be punished by the king, according to his caste, wealth and general character, etc. He should be made to return to the bridegroom with interest all the money spent by the bridegroom, his father, etc., for the betrothal. If the betrothed damsel dies before marriage, the bridegroom shall take back the sulka previously given (to the damsel), *e.g.*, rings, etc.; after doing what? after calculating the expenditure incurred both by himself and the giver of the bride; (the meaning is) let the bridegroom take only what remains of the property given to the damsel, *e.g.*, rings, etc., after deducting from it the expenses incurred by both the parties on account of the betrothal.

Bandháyana states a distinction in the taking of head ornaments, etc., given out of affection to a damsel before the time of betrothal, by her mother's father, father, etc., intending her own ownership: "Let the uterine brother always take the wealth of a deceased damsel; in his default, the wealth goes to the mother, and in her default to the father."<sup>2</sup> By an easy transition from the subject on hand, something is said even in the case of the living wife.

Yogísvara: "The husband need not repay to the wife *stridhana* taken by him during famine, for the performance of religious duties, during disease or while in duress."<sup>3</sup> Performance of religious duties], *i.e.*, those which should indispensably be performed. In duress] confinement in jail, etc. If under these circumstances, the husband having no other resource takes the *stridhana*, he need not return that wealth to her; the meaning is that he cannot be compelled to repay; if under other circumstances, it should certainly be repaid; as the husband only is permitted (to take) in the above-mentioned circumstances and as punishment is laid down in the case of others, according to the text: "Those relatives who take perforce their

1. Yājñavalkya, II. 146.

2. Not found.

3. Yājñavalkya, II. 147.

wealth while they are alive, a righteous king should visit with the punishment for theft."<sup>1</sup>

Yājñavalkya thus lays down the nature of *stridhana*: "What is given by the father, mother, husband and brother, what is obtained before the nuptial fire, and what is given at the time of supersession, etc., are declared to be *stridhana*; as also what is given by relatives, *sulka* and *anvādhēyaka*."<sup>2</sup> [Obtained before the nuptial fire] given by maternal uncles, etc., at the time of marriage before the fire.

Ādhivédhanika is also described thus: "To a superseded wife, let him (the husband) give an equal sum, for the act of supersession, provided *stridhana* had not been given her; but if it had been given, one half shall be allotted."<sup>3</sup> A superseded wife is one over whom a second marriage is contracted. The meaning is that *ādhivédhanika* is money given to her for being superseded; he shall give an equal sum] the meaning is that a sum equal to that spent in ornaments, etc., for the second wife should be given to the first (superseded) wife. Here he lays down a distinction: 'to whom no *stridhana* had been given.' The meaning of this has been explained at length in the connection of the determination of the mother's share. By the particle 'etc.,' in '*ādhivédhanika*, etc.,' are meant what was gained by the spinning of cotton, by sale, partition, acceptance of gift, finds, etc.

Kātyāyana: "Whatever is given to women at the time of their marriage before the nuptial fire is denominated by the sages '*stridhana* given before the nuptial fire.' Again what a woman gets when being led from the house of her father (to that of her husband) is called '*stridhana* given at the time of the nuptial procession.' Whatever is given out of affection either by the mother-in-law or father-in-law as a token of affection, and that which is given in return for her humble prostrations is called '*stridhana* given out of affection.' What is received by a woman before or after marriage in the house of her husband or of her father, from her brother or her parents, is called *saudāyika*. What is received by a woman after marriage in the family of her husband or in the family of her father is called gift subsequent."<sup>4</sup>

1. II. Cole. Dig. 598, CCCCLXXX.

2. Yājñavalkya, II. 144.

3. Yājñavalkya, II. 148.

4. II. Cole. Dig., 585, CCCCLXIV & V. & 586, CCCCLXVI; 587, CCCCLXVIII.

*The order of succession to the property of a deceased divided  
parcener leaving neither son nor grandson.*

On this subject, Yājñavalkya says: "The wife, the daughters likewise, both parents, brothers, likewise their sons, the gotrajas, bandhus, the disciple and the fellow-student; of these, on failure of the preceding, the next in order is the heir to the estate of one who has departed for heaven, leaving no issue; this rule extends to all classes."<sup>1</sup> Wife] one who had been duly married. The singular is with regard to the caste. Therefore if they are equal or unequal in caste, they shall divide the wealth and take their proper shares according to the rule laid down in 'four, three, two and one shares.'

In default of the wife, the daughters take. So also Kātyāyana: "The wife takes the wealth of the husband if she remains chaste; in her default, the daughter if she is unmarried."<sup>2</sup> By the distinction laid down in 'if she is unmarried' it is understood that in case both married and unmarried daughters exist, the unmarried only take; in default of the unmarried, the married take. Even among the married, the poor alone first take; and in their default only, the rich; as the reasoning employed in the rule laid down by Gautama: 'stridhana goes to the daughters unmarried and unprovided for' applies equally to the paternal wealth.

In default of the daughter, the daughter's son even is the heir; as laid down by Vishnu: "If there exist neither sons nor grandsons of a person, the daughter's sons shall take the wealth; for the male offspring of a son and of a daughter are considered equally qualified to perform the obsequies for the person."<sup>3</sup> This meaning is also inferred from the use of the particle 'also' made use of by Yājñavalkya in the text, 'the daughters also.'

In the absence of the daughter's son, the parents are the heirs. Parents, *i.e.*, mother and father. The order of mention in the expansion of the compound must also be understood to apply to the taking of wealth. Hence the mother takes first; and in her default the father. This order in the whole sentence 'the wife, the daughters, etc.' is stated in the latter portion of the passage, 'in default of the preceding, the succeeding is the heir'; and that all that is correct is laid down by us, in the 'inheritance' chapter of the

1. Yājñavalkya, II. 135.

2. Not found.

3. Not found.

Subodhini, a commentary on the Mitakshara ; and it is not here written for fear of redundancy.

In default of the father, the brothers (take) ; here also it is to be understood that the uterine brothers take first, because of their nearness of relation owing to their being born of the same mother, and that in the absence of uterine brothers, the half-brothers succeed ; heirship should be understood to arise according to the nearness of relation. 'To the nearest sapinda, the inheritance next belongs' ; the meaning is that he among the sapindas who is the nearest related by particles of body shall take the wealth (of the deceased). In default of brothers of both the classes, their sons, i.e., brothers' sons take ; even here, the sons of uterine brothers take first ; in the absence of these, the sons of half-brothers. If, however, a brother dies and his wealth goes to the brothers according to the rule laid down in "the wife, the daughters also," and if before the partition of that takes place one of the brothers dies leaving sons, then the sons shall certainly get their father's share, according to the rule 'among sons of different fathers, the allotment of shares is according to the fathers'. 'The gotrajas' ; by this term are meant the paternal grandmother, the paternal grandfather, his sons, and their sons, and in their default the paternal great-grandmother and the rest ; and in default of them also, the samanodakas take (the property). Here this is the order. In default of brothers' sons, the paternal grandmother takes the wealth ; in her default, the paternal grandfather ; for just as the father has a right to the property only after the mother, so also the succession of the paternal grandfather is only after the grandmother. In default of the paternal grandfather paternal uncles succeed, in the same way as brothers in default of the father. Even here the relative position of brothers of full and of half blood is the same : the sons of the paternal grandmother take the inheritance first and in their default the sons of the co-wives of the paternal grandmother. In default of even these, the sons of paternal uncles succeed in the same way as the brother's sons (when brothers of both kinds are extinct). In their default, the paternal great-grandmother ; in her default, the paternal great-grandfather ; in his default, the sons of the paternal great-grandfather. Thus the order of heirs up to the seventh degree should be known by the rule 'in the absence of the brother, his sons



succeed.' In default of sapindas to the seventh degree the samanodakas succeed; and in this case also, the aforementioned distinction of nearness of relation should be applied. In the absence of Gotrajas, Bandhus take the wealth. Bandhus are of three kinds, viz., Ātmabandhus, Pitribandhus and Mātribandhus; as is laid down by Vṛiddhasūtātapa: "The sons of one's father's sister, the son's of one's mother's sister, and the sons of one's mother's brother, are known as one's Ātmabandhus. The sons of one's father's father's sister, the sons of one's father's mother's sister, and the sons of one's father's mother's brother are known as one's Pitribandhus. The sons of one's mother's father's sister, the sons of one's mother's mother's sister, and the sons of one's mother's mother's brother, are known as one's Mātribandhus."<sup>1</sup> In this case also, according to the order of enumeration, the Ātmabandhus get the wealth first, because of their nearness of relation. Similarly, in default of them the Pitribandhus; and likewise in default of the Pitribandhus, the Mātribandhus. This is the order. In default of even the bandhus, the preceptor (takes;) and in default of the preceptor, the pupil.

So also, Āpastamba: "In the absence of sons, the nearest sapinda relation takes; in his default, the preceptor; in his default, the disciple; in default of the disciple, a fellow-student, whose Upanayana was celebrated by, or who was studying under, the same preceptor (as the deceased); in default of the fellow-disciple also, Srotriyas inherit the wealth."<sup>2</sup>

This is laid down by Gautama: "Srotriyas shall take the wealth of a deceased Brahmin leaving no issue."<sup>3</sup> A Srotriya] one who has studied one Śukhā (of the Veda). In the absence of even a Srotriya, any Brahmin who is near shall take.

So also Manu: "In default of all, Brahmins who are well-versed in the three Vedas, pure and who have controlled their senses, shall take the wealth."<sup>4</sup> Never shall the king take the wealth of a Brahmin; for it is stated by Nārada: "The wealth of a Brahmin,

1. Not found.

2. Āpastamba, II. 6, 14, 2 & 3.

3. Gautama, XXVIII. 41.

4. Manu, IX. 188.

on his death without any heir, should be given only to Brahmins; otherwise the king becomes tainted with sin."<sup>1</sup>

Manu: "The wealth of a Brahmin shall never be taken by the king; this is eternal law."<sup>2</sup>

The wealth of a Kshatriya, etc., in the absence of all heirs down to the fellow-student is taken not by Brahmins but certainly by the king. That is laid down by Manu: "The wealth of persons of other castes, in the absence of all heirs, the king takes."<sup>3</sup>

Yājñavalkya states an exception to the mode of inheriting by sons, etc., in order: "The heirs to the wealth of an ascetic, a sanyasin and a brahmachárin are in their order, the preceptor, the virtuous disciple, and the brother in holiness of the same order."<sup>4</sup> Brahmachárin] permanent student, not one who wishes to pass into the order of a householder. Virtuous disciple] one who has studied and meditated upon the knowledge of Átman. Brother in holiness] one who is regarded as a brother. Ekáñirthi] one of the same order of life, i.e., an ascetic who lives in the same order. One who is a brother in holiness and belongs to the same order of life is a brother in holiness of the same order. Here the word 'order' (in 'in their order') intends inverse order. (Thus) the wealth of an ascetic, i.e., food, etc., acquired in the manner laid down in the text: "Let him hoard wealth sufficient for a day, a month, six months or a year, and let him abandon all that in the month of Ásvayuja,"<sup>5</sup> a fellow-student takes. The wealth of a sanyasin consisting of cloths, books, etc., the virtuous disciple takes. The wealth of a permanent student consisting of books, etc., the preceptor takes.

#### *Partition among reunited brothers.*

On this subject, Yājñavalkya: "A reunited brother shall take the wealth of a reunited brother; and a uterine brother that of a uterine brother. One born of a different mother, if reunited, shall take the wealth; but not one born of a different mother if not reunited. A uterine brother even if not reunited shall obtain (the wealth) and not a brother born of a different mother, even though reunited."<sup>6</sup> The property which was once divided but afterwards

1. Not found.

3. Manu IX. 180.

5. Yājñavalkya, III. 47.

2. Manu, IX. 189.

4. Yājñavalkya, II. 140.

6. *Ibid* II. 138 & 139.

mixed is called samsrishta; he who has such wealth is called samsrishtin (reunited). The wealth of such a person if he dies without sons or grandsons, the reunited parcener shall take, even though his wife be present. The singular in 'samsrishti' is purposeless. Therefore (the meaning is) the reunited parceners shall divide the wealth and take their shares; and they shall also maintain the widow (of the deceased).

Reunion can take place only with the father, brothers and paternal uncles, and with nobody else. That is laid down by Brihaspati: "He who being once divided, lives again, through affection, together with his father, brother or paternal uncle, is termed reunited."<sup>1</sup> If while the wife of the deceased, whose pregnancy was not manifest, was alive the reunited parceners divide and take his wealth, and if subsequently of this pregnancy a son be born, then the wealth of the reunited parcener should be handed over to the son; it is to be understood in the latter portion also.

"A uterine brother of a uterine brother"; the wealth of a reunited parcener, a mere reunited parcener alone shall not take, but a uterine brother shall take; not a half-brother. "One born of a different mother, if reunited, (shall take the wealth), but not one born of a different mother, if not reunited; a uterine brother shall take even though not reunited; but not one born of a different mother though reunited." One born of a different mother, if he be reunited, shall take the wealth; one born of a different mother if he is not reunited shall not take. This is inferred by the use of the expression 'even if not reunited' in the text: "A uterine brother shall take even if not reunited." In the case of the half-brother, reunion alone is the ground of his taking the wealth; the word 'not reunited' is equally related to both what follows and what precedes, like the eye of a crow. Therefore 'though not reunited, he takes the wealth if united' is a separate sentence. 'Though not reunited', *i.e.*, though his separate wealth had not been mingled with the wealth of others. One reunited, born of the same womb, takes the wealth of the deceased reunited brother. By this it is indicated that his being uterine is the only ground of his taking the wealth. Here the word 'not reunited' is understood in the latter half of the passage also as it is in the former. Therefore 'one born of a different

mother, even though reunited shall not (tako) ' is the latter portion of the text. In this sentence by the word ' re-united ' is denoted ' (any) reunited parcener ' and not only ' a uterine brother reunited. ' Even if the reunited be one born of a different mother, the brother born of a different mother alone takes the wealth. Here the particle ' eva ' (alone) if taken in the light of Manu's text means this. Where there is a uterine brother not reunited and a half-brother reunited, then the uterine brother shall get a share of the wealth, owing to his being born of the same mother ; and the half-brother also takes another share owing to the existence in his case of the relation of reunion.

Manu also : " If divided brothers again living together institute a second partition, then the partition shall be equal ; there is no right of primogeniture in this case. The deduction for the eldest is one-twentieth of the property and the best of all chattels"<sup>1</sup> ; the meaning is : nothing implying unequal partition should take place. Likewise : " If among them, one whether the eldest or the youngest loses his share or dies before partition, his share is not lost."<sup>2</sup> The meaning is this : if among reunited brothers one whether eldest or youngest, is, before shares are allotted, deprived of his share on account of entering another order or being put out of caste, or dies, his share is not lost. His share therefore should be separated and kept ; but they should not divide and take it. How the separately kept property should be disposed of is laid down thus : " Such of his uterine brothers as are reunited, having assembled shall divide his wealth, as also uterine sisters."<sup>3</sup> In these two texts by the use of the two expressions ' uterine brothers ' and ' brothers ', ' uterine brothers ' should be understood to mean ' brothers born of the same mother ' and ' brothers ' to mean ' brothers born of different mothers ' ; otherwise there would be redundancy. ' Those of his uterine brothers who are reunited ' ; here by the use of the expression ' reunited ' it is meant that those uterine brothers who are denoted by that expression shall divide ; and by the word ' reunited ' not being used, even those uterine brothers who are not reunited are also meant. Therefore the meaning of the text is this : the uterine brothers though not reunited, and likewise those who have gone to a foreign country

shall assemble together and divide the reserved wealth in equal shares, *i.e.*, with no greater and less shares. So also those reunited half-brothers of the same caste; and also uterine sisters. The meaning is that all those from uterine brothers to uterine sisters shall divide the wealth in equal shares. The partition in the case of reunited half-brothers of other castes shall be according to the rule laid down in the text: 'four, three, two and one share respectively'. As the use of the word 'samam' is sufficiently justified by its application to the case of half-brothers of the same caste, excluding brothers of different caste, there is nothing to prevent the application of the rule in the text, 'they take four, three, two and one shares respectively.'

Sankha says: "If one among the brothers die leaving no issue, or if one of them enter another order, the rest (of the brothers) shall divide his wealth, excepting the stridhana; or they should give maintenance for life to those of his wives as keep unsullied their husband's bed; and they may cut off that allowance in the case of others."<sup>1</sup> Others] those who do not keep their husband's bed unsullied.

Brihaspati: "He among the reunited parceners who earns more wealth by his learning, valor, etc., should be given two shares; and the rest shall be equal sharers."<sup>2</sup> The allotment of two shares should be understood in case he acquires greater wealth. Here the meaning is this: In default of reunited half-brothers, he among the uterine brothers who is reunited shall take the wealth of a reunited brother dying without issue; in default of reunited uterine brothers, he among the half-brothers who is reunited shall alone take the wealth. Here also among half-brothers, if some of them are of the same caste and others of dissimilar castes, then it should be inferred that the rule laid down in the text: 'they take four, three, two and one shares respectively' applies. Where the deceased's uterine brothers and half-brothers are reunited, then all of them shall take in the manner above mentioned. If the reunited brothers are half-brothers, and the non-reunited are uterine, then also uterine and half brothers shall take; if the reunited brothers are uterine and the non-reunited are half-brothers, then the uterine brothers alone shall take. If some of the uterine brothers are reunited and some

others are not, then the reunited uterine brothers shall take; because of their double relation, viz., being reunited and being uterine. In all cases the widow gets her maintenance. Some say that the distinction here stated between brothers arising from being born of the same mother and of different mothers should be applied in the case of father's uterine brothers and father's half-brothers, by parity of reasoning. That is not reasonable; the text 'of the uterine brother, the uterine brother' lays down a special rule; as there is no reason to think that reunited brothers alone are not meant by the text, the term 'uterine brother' cannot include the paternal uncle, and as such a construction is inconsistent with the practice in the world; the mode of reasoning does not apply here, being opposed to the express texts. Therefore the whole is unexceptionable.

*Persons incompetent to inherit.*

On this subject, Yājñavalkya: "The impotent, the outcast, his son, the lame, the insane, the idiot, the blind, and persons suffering from incurable diseases; these should be maintained, they being ineligible for a share."<sup>1</sup> [His son] the son begotten by an outcast before the prayaschitta (expiation) is performed. Lame] devoid of a leg. The insane] incurably affected with insanity due to the combined effect of wind, bile and phlegm or to devil-possession. Idiot] one whose mental faculties are impaired, i.e., one who is incompetent to know what is good from what is bad. Persons suffering from incurable disease] persons suffering from chronic diseases as scrofula, etc. By the particle 'etc.' are included the enemy of the father, etc.

Likewise Nārada: "The enemy of the father, the degraded, the impotent, one who has committed sin, these, even though they be aurasas, do not get shares. How could they if they be kshetrajās?"<sup>2</sup>

Vasishtha: "Persons who have entered a different order are shareless."<sup>3</sup> Different order] the orders of a perpetual student, ascetic and sanyasin.

Manu: "The impotent and the degraded, persons deaf and blind, from their birth, likewise the insane, the idiot and the dumb

1. Yājñavalkya, II. 140.

2. Nārada, XIII. 21.

3. Vasishtha, XVI. 52.

and also those who are devoid of an organ, are shareless.”<sup>1</sup> Persons devoid of an organ] persons whose sensory organs have been impaired by disease and the like. These do not get shares, but should be maintained. So says Manu : “ It is proper that a wise man should give according to ability maintenance to these without stint ; if he does not give, he shall become degraded.”<sup>2</sup> These] persons excluded from inheritance. Without stint] for life. The exclusion of these from inheritance is only where prior to division they are subject to irremediable defects ; but if one subject to defect, at the time of partition, is cured of it after partition by medicine, etc., or by expiatory ceremonies, then he certainly gets his share on the principle laid down in the text : “ the son begotten after division on a woman of the same caste takes a share.”<sup>3</sup> The masculine gender in the words, *patita*, etc., is of no consequence, being found in the terms denoting the subject. Therefore the mother, the wife and the daughters if ill-behaved are certainly shareless. The impotent and the rest alone are incompetent to inherit ; not their sons if they are free from defect.

So also Yājñavalkya : “ The *aurasa* and the *kshetraja* sons of these are takers of a share if they are free from defect. The daughters of these should be maintained till they are provided with husbands. The sonless wives of these conducting themselves aright should be maintained, but if they are unchaste and perverse, they should be expelled.”<sup>4</sup> The impotent can have only *kshetraja* sons ; the rest may have *aurasa* and *kshetraja* sons. By the mention of *aurasa* and *kshetraja* sons alone, it is understood that the other kinds of sons have no shares. The appointed daughter also gets a share, as she is equal to the *aurasa*. So she is also denoted by the term ‘ *aurasa* ’. The daughters are to be maintained however till marriage. The sonless wives of the impotent and the rest if well-behaved should be maintained. But the unchaste wives should be expelled.

Accordingly it is said : “ The wives who are unchaste and perverse likewise should be expelled.” Should only be driven out : the perverse should be maintained, as they are free from unchastity.

1. Manu, IX. 201.

2. Yājñavalkya, II. 122.

3. Manu, IX. 202.

4. Yājñavalkya, II. 141 and 142.

On this point Yājñavalkya : "What else is acquired by oneself without detriment to the paternal estate, as presents from a friend, and gifts at the time of marriage, do not belong to the (rest of the) coheirs. He among the coheirs who recovers property descended in regular succession but taken away, need not give it to the rest of the coheirs ; as also wealth acquired by learning."<sup>1</sup> Without detriment to the paternal wealth] no injury being done to the father's wealth ; this goes with 'presents from a friend, etc.' Presents by a friend] what was received from a friend. That parcener who among coparceners, such as sons, etc., recovers after being permitted property which was duly descended from father to son, but which was taken away by others and which was not recovered by the father and the rest owing to lack of ability, need not give that property to the other coheirs. But the recoverer only shall take it.

Sankha, however, states a distinction in the case of land which was taken away and subsequently recovered : "He who recovers by labor the land previously lost shall be given a fourth part and the rest shall divide according to shares."<sup>2</sup> The meaning is that the rest of the coheirs should, after giving to the recoverer a fourth part, divide the remaining land with the recoverer and take their respective shares. Wealth acquired by learning] acquired (as remuneration) for teaching, explaining the purport of the Vedas, the recitation of the Vedas, and for studying the Vedas, etc. As impartibility is stated as regards the property acquired from friends, etc., only when it is gained without any detriment to the paternal wealth, it is in effect said that presents from a friend, etc., when acquired to the detriment of the paternal estate are certainly divisible.

Here as the expression 'acquired without detriment to the paternal estate' qualifies only 'wealth got as presents from friends etc., or for learning' ; therefore it is understood that wealth acquired as acceptance of gift even to the detriment of the paternal wealth, is certainly divisible ; and such a practice is also observed.

Nārada : "A brother who looks after the family of another brother engaged in the acquisition of knowledge, shall get a share



in the wealth, acquired by such learning, even though unlearned himself."<sup>1</sup>

Kātyāyana: "Wealth obtained by learning acquired while being maintained by another is called wealth acquired by learning."<sup>2</sup>

Manu: "Let one not give to his coheirs what was acquired by him by labor, without injury to the paternal wealth; as also wealth obtained by learning."<sup>3</sup> By labor] by service, war, etc.

Similarly: "Cloths, vehicles, ornaments, cooked rice, water and women, yogakshema and pasture ground for cattle; these are declared impartible."<sup>4</sup> The impartibility stated in respect of cloths is only in the case of cloths that have been worn. Vehicle] carriage, horse, palanquins, etc. In this case whatever is used by one should not be divided; or *patra* may mean money secured by documents.

So also Brihaspati: "Having discharged the debts secured by documents."<sup>5</sup> Discharged] paid up. "

Kātyāyana: "Money secured by bonds." Here the meaning is this: only so much of the debts, as is undischarged, is impartible.

Brihaspati: "The manner above mentioned should be understood to apply in the case of debts secured by bonds. That should be cleverly divided, or else it will become useless. The cloths and ornaments should be divided, by selling them; the debts secured by documents by discharging them; and dressed rice by exchanging it for undressed rice."<sup>6</sup> Where there are many horses, etc., they are certainly divisible among parceners where they live by dealing in such animals. If goats, etc., are indivisible, being unequal in number, then they belong to the eldest.

So also Manu: "A single goat or sheep should never be divided. It is declared that a single goat or sheep should be given to the eldest."<sup>7</sup> Whatever ornaments are worn by any one are indivisible. So Manu: "The ornaments worn by females during the lifetime of the husband, let the coheirs not take; if they take,

1. Nārada XIII. 10.

3. Manu, IX. 208.

5. Not found.

2. II. Cole. Dig., 444., CCCCXLVII.

4. Manu IX. 218.

6. Brihaspati, XXV. 80 and 81.

7. Manu, IX. 119.

they shall be degraded.”<sup>1</sup> Here ‘worn’ means given to them out of affection, etc., to wear so as to produce in them an exclusive ownership. Dressed rice] cakes, etc. That should be eaten by all the coheirs together. Water] its reservoir, i.e., wells, etc.; this too is indivisible; but should be made use of by turns. Women] female slaves; women of the seraglio. Where the female slaves are unequal in number, they should be made to do duty by turns; if they are equal in number, they should be divided. But women of the seraglio even though equal in number are not divisible.

That is laid down by Gautama: “There is no division of women who were concubines.”<sup>2</sup> The expression in the original means women of the seraglio. Yogakshema]; Yoga is the getting of what was not got already; by the word ‘Yoga’ are denoted those rites performable by *śrauta* and *smārta* fires which are the causes of acquiring what was not got already. By the word ‘kshema’ are denoted conservatory acts such as gifts outside the altar, construction of tanks, laying out of gardens, etc., for the purpose of protecting what has been already acquired.

These two, though belonging to the father are not divisible; even though acquired to the detriment of the paternal wealth, they are not divisible; according to the text of Laugakshi: “Kshema is a conservatory act; Yoga is a sacrificial act; so sages declare. They are declared to be impartible, as also bed and chairs.”<sup>3</sup> Some others hold that by the term ‘Yogakshema’ are meant ministers, priests, who afford prosperity (Yogakshema); others yet are of opinion that missiles, cowtails, umbrellas, shoes and the like are meant. Prachāra] the way of ingress and egress to and from houses, gardens, etc. Here ‘inequality’ means inequality in the value of shares given and not in the number of articles given; as, if there are four sons and three horses, here, the inequality is due to the indivisibility into four shares.

As for another text: “Sacrificial things, kshema, vehicle, dressed rice, water and women; these are indivisible among sago-tras even though descended for a thousand generations”,<sup>4</sup> that has reference to the kshatriya and other sons of a man of the Brahmin

1. Manu, IX. 200.

3. Not found.

2. Gautama, XXVIII. 47.

4. Not found.

caste; because of the particular text: "Land obtained by acceptance of gift should never be given to the kshatriya son, etc."<sup>1</sup> Sacrificial things] things obtained by sacrifices.

It has been said that wealth acquired by valor, etc., is indivisible; but Vyása lays down an exception: "If a coheir depending on common wealth gain by valor something such as carriages, etc., the brothers are sharers therein."<sup>2</sup> Common] mingled wealth; depending upon it.

Yājñavalkya: "In the case of an addition made to the common wealth, the division is declared equal."<sup>3</sup> The meaning is that if the united wealth is increased by agriculture, trade, etc., then the shares of all are equal, and two shares should not be given to the acquirer.

*Supplementary provisions regarding partition.*

On this subject, Yājñavalkya: "Property withheld by one coheir from another and which subsequently comes to light, they shall again divide it in equal shares; this is fixed law."<sup>4</sup> The meaning is that if any property concealed from one another is discovered after partition, they shall divide it in equal shares only; they need not give a deduction of one-twentieth in favor of the eldest according to the text: "To the eldest, a twentieth."<sup>5</sup>

Likewise: "In case the partition is doubted, the fact of partition should be ascertained by means of relatives, bandhus, witnesses and documents and by houses and lands separately held."<sup>6</sup> If after partition a doubt arises in course of time as to the fact of partition, then the ascertainment of the partition should be made by means of gnatis, paternal relations, maternal relations as maternal uncles according to the aforesaid description, by witnesses and written partition-deed, and likewise by separate possession of houses and lands. The meaning is that it may also be ascertained by their separate performance of agriculture, and of the five mahayajnas.

Nārada: "If a doubt exist about the fact of partition, then it should be ascertained by gnatis, partition-deed and separate

1. Brihaspati, XXV. 30.

3. Yājñavalkya, II. 120.

5. Manu, IX. 112.

2. II. Cole. Dig. 81, CX.

4. Yājñavalkya, II. 126.

6. Yājñavalkya, II. 149.

transaction of affairs. Among unseparated brothers the performance of religious duties is single; when partition has indeed been instituted, the performance becomes separate. Separated, not unseparated brothers can bear witness, stand surety, make and accept gifts."<sup>1</sup> Similarly: "If many persons born of the same man be separate in transaction of affairs, and religious rites and have separate implements of work, and do not consult each other in all affairs, they may even give away or sell their own shares; they can do all this as they please; for they are masters of their own wealth."<sup>2</sup>

Brihaspati: "Coheirs, whether separated or unseparated, are alike in immoveable property; one is not qualified to give it away, to pledge, or to sell it."<sup>3</sup> Adhamāna] pledging. This too is to facilitate the transaction of affairs and not to establish the fact of partition.

Here ends the Eighth Chapter of the Madana Parijata.

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1. Nārada, XIII. 36-39.

2. Nārada XIII. 42 and 43.

3. Brihaspati, XXV. 93.

